

# Update from the Experts: PSERS Talks Retirement-Covered Compensation

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*PASBO 63<sup>rd</sup> Annual Conference and Exhibits*

# AGENDA

- Why do we care?
- Included/Excluded
  - Severance Payments
  - Step Cash/Top-of-Scale Payments
  - Longevity Payments
  - Incentive v. Bonus Payments
  - Settlement Agreements and Court Awards
  - Optional Days v. Additional Duties
- Scenarios
- Questions



# WHY DO WE CARE?

**#1 Compensation is a primary factor used in calculating the final average salary (FAS) and determining member and employer contributions.**

- A member's compensation is used to calculate FAS.
- A higher FAS generally equates to a higher monthly benefit.
- For Class T-C, Class T-D, Class T-E, and Class T-F, FAS is "... the highest average *compensation* received as an active member during any three nonoverlapping periods of 12 consecutive months...."
- For Class T-G and Class T-H, FAS is "[t]he highest average *compensation* received as an active member during any five nonoverlapping periods of 12 consecutive months, .."
- Spike in FAS results in cost shifting to other employers.

# WHY DO WE CARE?

#2 For new members hired after July 1, 2019, both the DB component and the DC component are based on the same salary.

Mary Smith  
Membership Class: T-G

DC Participant  
Contribution  
Rate – 2.75%

DB Member  
Contribution  
Rate – 5.5%



DC Participant  
Contributions  
\$2.75

DB Member  
Contributions  
\$5.50

# WHY DO WE CARE?

#3 The Employer Contribution Rate is the same per member/participant, regardless of their Membership Class, and it is applied across total payroll.

If the Employer Contribution Rate (ECR) is 34.79%, then

the ECR for Class T-C and Class T-D members is 34.79%,

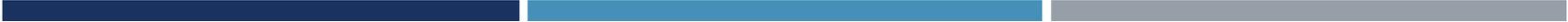
the ECR for Class T-E and Class T-F members is 34.79%,

the ECR for Class T-G and Class T-H members is 34.79%, and

the ECR for DC participants is 34.79%

If total payroll is \$10,000,000. Total contributions due is \$3,479,000.





# **WHY DO WE CARE?**

**#4 The Commonwealth reimburses the school employers based on the compensation reported to PSERS.**

- **Reimbursement is for total ECR.**
- **Auditor General notifies PSERS of any findings issued against a school employer for reporting to PSERS non-retirement covered compensation.**

# WHY DO WE CARE?

**#5 The Retirement Code defines “compensation” and identifies certain payments to be excluded.**

## Definition of “compensation”--

Pickup contributions and mandatory pickup participant contributions plus any remuneration received as a school employee excluding reimbursements for expenses incidental to employment and excluding any bonus, severance payments, any other remuneration or other emolument received by a school employee during his school service which is not based on the standard salary schedule under which he is rendering service, payments for unused sick leave or vacation leave, bonuses or other compensation for attending school seminars and conventions, payments under health and welfare plans based on hours of employment or any other payment or emolument which may be provided for in a collective bargaining agreement which may be determined by the Public School Employees' Retirement Board to be for the purpose of enhancing compensation as a factor in the determination of final average salary, and excluding payments for military leave and any other payments made by an employer while on USERRA leave, leave of absence granted under 51 Pa.C.S. § 4102 (relating to leaves of absence for certain government employees), military leave of absence granted under 51 Pa.C.S. § 7302 (relating to granting military leaves of absence), leave granted under section 1178 of the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, or other types of military leave, including other types of leave payments, stipends, differential wage payments as defined in IRC § 414(u)(12) and any other payments, provided, however, that the limitation under section 401(a)(17) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 401(a)(17)) taken into account for the purpose of member contributions, including regular or joint coverage member contributions, regardless of class of service, shall apply to each member who first became a member of the Public School Employees' Retirement System on or after July 1, 1996, and who by reason of such fact is a noneligible member subject to the application of the provisions of section 8325.1 (relating to annual compensation limit under IRC § 401(a)(17)), and shall apply to each participant pertaining to the participant's participation in the plan.

# WHAT DOES THAT MEAN?!

Compensation is all regular remuneration for school service rendered **excluding:**

1. Reimbursement for expenses incidental to employment
2. Bonuses
3. Longevity Payments
4. Payments for **Unused** Leave and **Unused** Compensatory Time
5. Cash payments made in lieu of benefits, i.e. health care
6. Severance payments
7. Payments not based on the standard salary schedule
8. Payments or reimbursements for attending seminars and conventions
9. Fringe benefits
10. Any payment made to enhance FAS



# WHAT IS SCHOOL SERVICE?

- School Employee is a person “engaged in work” relating to a public school.
- Work = Person performing some service of value to an employer for which the employer agrees to pay compensation.
- Agreement under which an employer pays an employee, but employee has no obligation to perform any service, while lawful, is not RCC.
- Cannot buy service credit by paying a salary – must perform work.

## Statutory exceptions to “work” requirement:

- Activated military service
- Sabbatical
- Service as exchange teacher
- Service with a collective bargaining organization
- Professional Study

## What is not school service?

- Paid administrative leave – not RCC
- Contract buyouts– not RCC
- Optional days—not RCC
- Longevity payments—not RCC



# STANDARD SALARY SCHEDULE

- The standard salary schedule refers to the payment schedule under which an employee is rendering service for the position.
- Usually established in a collective bargaining agreement and is a fixed scale that varies by seniority, experience, and/or education.
- A standard salary scheduled can be established for employees not covered by a collective bargaining agreement by reviewing the salary history of the position with a specific employer.
- Payments made outside of the schedule, although lawful, cannot be reported as RCC unless the payment is tied to actual work.
- Payments made under a compensation package agreed to after notice of termination are not part of the standard salary schedule.

APPENDIX A - Teacher Salary Schedule for 2013-2014

	1	2	3	4	5	6	7
	B.S.	B.S.+15	B.S.+30	M.S.	M.S.+15	M.S.+30	E.D.
A	35,540	36,458	37,378	38,296	39,958	41,612	43,268
B	37,008	38,053	39,098	40,141	41,799	43,455	45,110
C	38,483	39,650	40,815	41,982	43,637	45,295	46,954
D	39,958	41,246	42,532	43,823	45,478	47,135	48,793
E	41,430	42,842	44,253	45,664	47,323	48,978	50,637
F	42,903	44,436	45,973	47,502	49,159	50,821	52,474
G	44,372	46,031	47,687	49,345	51,005	52,659	54,319
H	45,846	47,629	49,406	51,187	52,843	54,503	56,158
I	47,323	49,226	51,128	53,033	54,684	56,346	58,000
J	48,793	50,821	52,846	54,868	56,528	58,183	59,841
K	50,265	52,416	54,562	56,714	58,368	60,027	61,682
L	51,739	54,014	56,282	58,552	60,207	61,867	63,528
M	53,211	55,607	58,001	60,396	62,052	63,709	65,364
N	54,684	57,200	59,717	62,232	63,893	65,551	67,208
O	56,158	58,799	61,439	64,076	65,733	67,388	69,048
P	57,632	60,396	63,156	65,920	67,574	69,234	70,890
Q	59,103	61,988	64,873	67,754	69,418	71,072	72,733
R	60,580	63,587	66,593	69,599	71,256	72,915	74,568
S	62,052	65,179	68,309	71,440	73,099	74,755	76,414



# SEVERANCE PAYMENTS

- Any payment received that is contingent on the member terminating or retiring.
- To show that the payment was in accord with the customary or scheduled salary scale with that particular employer, personnel with similar educational and experience backgrounds, who are not terminating service, must have also received the payment.
  - i.e. Wage Freezes
- No inducement or quid pro quo is required.
- Look at the totality of the circumstances and beyond the characterization of payments in an agreement.
- Payments for leave granted as part of a termination package is a severance agreement and not a payment for used leave.
- Payment for previously accumulated leave is RCC even if leave is used immediately before termination or retirement.



# EXAMPLES OF SEVERANCE PAYMENT

- A payment agreed to after a notice of termination is given. *Hoerner v. PSERB*, 684 A.2d 112 (Pa. 1996).
- A \$16,000 salary increase paid in the employee's last year of employment. Claim that such payment was made to recognize an employee's years of devoted service, as well as to make up for years of underpayment, was rejected. *Laurito v. PSERB*, 606 A.2d 609 (Pa. Cmwlth. 1992).
- A payment for unused vacation and sick leave, in lieu of a salary increase, made in connection with an agreement to terminate service. *Wyland v. PSERB*, 669 A.2d 1098 (Pa. Cmwlth. 1996), *alloc. denied*, 680 A.2d 1165 (Pa. 1996). **Note:** this case was decided in the context of a severance agreement. The payment, however, could also have been rejected on the basis that it was a payment for unused vacation and sick leave.
- Large salary increase, coupled with agreement to terminate service. *Hoerner v. PSERB*, 684 A.2d 112 (Pa. 1996); *Cannonie v. PSERS*, 952 A.2d 706 (Pa. Cmwlth. 2008).
- Payments made to an employee after the employee has been formally relieved of duties. *Hoerner v. PSERB*, 684 A.2d 112 (Pa. 1996).
- Payment made to allow an employee to purchase military credit, made as part of agreement to terminate service. *Dowler v. PSERB*, 620 A.2d 639 (Pa. Cmwlth. 1993).
- Salary increases received by employees who agreed to retire under a revised collective bargaining agreement were severance agreements because employees who did not retire remained subject to the lower salary schedule. *Hartline v. PSERB*, 2015 Pa. Commw. Unpub. LEXIS 77 (Pa. Cmwlth. Jan. 28, 2015), petition denied 125 A.3d 1203 (Pa. 2015).



# STEP CASH/TOP-OF-SCALE

- A payment made by an employer to a member, who is restricted from a salary increase, due solely to the fact that the member is at the top of the salary schedule.
- The payment will be considered RCC, even though **not** added to base salary, if:
  1. Amounts are clearly stated.
  2. Amounts are agreed upon in advance.
  3. Amounts are applicable to all school employees in the same position, and years of service, as contracted, on the salary scale.
  4. The employer has no discretion in making the payment.
- The payment may be made in either a one-time payment or multiple payments during the fiscal year.



# LONGEVITY PAYMENTS

- A payment made by an employer to an employee who reaches a certain number of years of service.
- Payment may be either a one-time payment or multiple payments during the fiscal year.
- Excluded from RCC even if given to entire class of employees because not based on work performed or an objective performance standard.
- The payments are restricted to those with lots of service credit, i.e. those most likely to retire; hence more likely to enhance their final average salary.
- Such payment **is** considered RCC if the payment(s) is added to a member's base salary for the following school year.
- Such payment **is not** considered RCC if the payment(s) is not added to a member's base salary.



# INCENTIVE V. BONUS

A payment is deemed to be an **incentive**, and is **RCC**, if:

1. The payment is tied to actual and objective work performance standards or a specific achievement, agreed upon prior to the start of the performance or attainment of the achievement.
2. There is an objective means of calculating the amount of the payment.
3. The employer is contractually obligated to make the payment (for a single year or multiple years, as defined in advance) if the performance standards or achievement are met.

A payment is a **bonus**, and is **not RCC**, if:

1. One-time payment, in lieu of a salary increase, which is not based on any performance standard and which is not included in base salary the following year.
2. Payment made to a member after services were rendered, where no expectation of payment existed.



# EXAMPLES

## Bonus

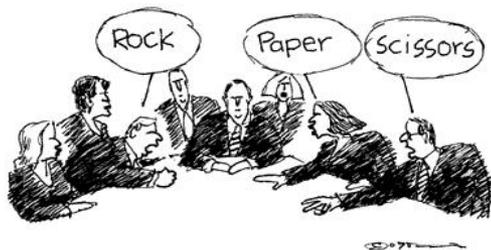
- Payment for perfect attendance.
- Employee is eligible to receive *up to 10%* based on set goals.
- Payment to extend a contract.
- Payment for satisfactory performance.
- Net Sharing Plan not included in base salary and not contingent on additional employee performance goals.
- Employee will be evaluated by the Superintendent at such times as the Superintendent deems appropriate. The Superintendent may, in his sole discretion, grant Employee a merit payment not to exceed \$2,500.

## Incentive

- An employee is paid \$1,000 for achieving national teacher certification paid annually for rest of employment.
- A set percentage is paid for each completed goal that is determined prior to the beginning of the school year.
- A payment of \$3,000 for attaining a master's degree paid as a lump sum each year and not added to base salary.
- Professional employees can earn credit pay at the rate of \$70 per pre-approved credit, not to exceed 12 credits in any one school year. The professional must earn a grade of "B" or higher.



# SETTLEMENT AGREEMENTS AND COURT AWARDS



*Jameson, the mediator, uses his last remaining negotiating tool in an effort to break the stalemate.*

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- An employer may be required to pay or reinstate a terminated employee as a result of a labor dispute.
- In limited cases, PSERS will allow pension credit and recognize certain payments as RCC.
- The full contract salary awarded to an employee as a result of arbitration or a court decision **is RCC** if the employee receives full back pay and benefits.
- *Any additional payments the employee may receive (e.g., court fees, accrued interest) are non-retirement-covered compensation.*

## Things to Remember:

1. The agreement or court order must identify the payment as back pay or salary.
2. The payment must correspond to the salary the member would have received.
3. The agreement or court order must sufficiently identify the year or years the payment is to be credited.
4. The amount the employer actually pays to the employee may be offset to reflect any monies the employee may have received from unemployment, workers' compensation, or other employment, but the full salary must be reported to PSERS.
5. Member contributions must be deducted from the amount paid to the member and remitted to PSERS by the employer.
6. A member is not required to return to service and may agree to resign in consideration of payment. Only back pay will be reportable as RCC.

# OPTIONAL DAYS AND ADDITIONAL DUTIES

- Payment for working a “nonwork” day or an extra payment for working an optional day is **not** RCC.
- The “nonwork” or optional days are, in effect, a payment for an unused vacation day and, therefore, excluded by definition.
- As a salaried employee, the base salary covers the period of employment, not the number of days worked. Paying the employee an additional amount to work on a day that the employee would otherwise have off is simply a payment for unused vacation time.
- Payment received for performing additional duties *beyond* regular work responsibilities is RCC even if the duties are performed during normal work hours.



## EXAMPLES: RCC OR NRCC?

- Superintendent is paid \$3,000 for performing duties of the Business Manager while employer begins hiring search for new Business Manager.
- Employer receives a grant for a literacy program and pays superintendent \$5,000 as a Grant Project Director.
- A superintendent receives an \$8,000 stipend for negotiating a collective bargaining agreement.
- Teacher is paid a lump sum of \$900 for coaching the soccer team.
- Superintendent's contract includes compensation of 10 additional days at per diem rate plus base compensation for working 240 days.
- Teacher works at the concession stand during the football game and receives \$500 for the year.
- Employee receives 2% of the total grant for any grant received by the district.
- Custodian is paid a per diem rate for working overtime.





# SCENARIOS

RCC=Retirement-Covered Compensation  
NRCC-Non-Retirement-Covered Compensation



# SCENARIO I

Your superintendent's contract ends on June 30, 2018. The superintendent and the school board have agreed to let the superintendent continue to receive a salary until June 30, 2018 but the last day of actual school service for the superintendent is December 31, 2017. The superintendent is not expected to report to work and the assistant superintendent has taken on all duties of the superintendent. Is the salary paid after December 31, 2017 RCC or NRCC?

**Answer: NRCC. The superintendent did not render any school service after December 31, 2017. Although the school may agree to pay the superintendent the remainder of the contract term, such payment is not remuneration for service rendered.**



## SCENARIO 2

The contract for your high school principal states that his base salary is \$150,000 for the 2017-2018 school year, based upon 250 work days. His contract states that he can work additional days beyond 250, and will be paid for each day worked above 250 at his then current rate of compensation. Is the salary he receives for each of the days worked above 250 RCC or NRCC?

**Answer: NRCC.** The principal is under contract for the entire school year, i.e. July 1-June 30, at a base salary of \$150,000 regardless of the number of days actually worked. The \$150,000 includes the pre-arranged vacation days. Working on one of those days and receiving an additional payment is simply a payment for not using a vacation day.



## SCENARIO 3

Your teacher's contract states that you will reimburse the employee for the college courses that he or she took as long as the teacher receives a passing grade. Is the payment you pay for college courses RCC or NRCC?

**Answer: NRCC. The payment is a reimbursement incidental to employment and is not tied to actual service rendered.**



## SCENARIO 4

Your teacher is on your salary schedule for a Master's degree. The teacher's contract states that for every three credits earned in addition to the Master's degree, the teacher receives \$350. Is the \$350 RCC or NRCC?

**Answer: RCC.** The payment qualifies as an incentive payment because attaining a degree related to services rendered to the employer is a performance tied to objective work performance standards agreed to ahead of time, the amount of the payment is objective, and the employer is contractually obligated to make the payment.



## SCENARIO 5

Your bus driver's contract gives them the choice to receive health benefits or receive \$1,000 in lieu of the health benefits. If the bus driver takes the payment instead of the benefits, is the \$1,000 RCC or NRCC?

**Answer: NRCC.** The payment is made in lieu of a benefit and, therefore, a fringe benefit. Had the employee not made the election, the employee would not have been entitled to the payment. The employee also did not perform any additional school service for the payment.



## SCENARIO 6

Your school secretary starts her maternity leave after using her accrued sick, personal, and vacation days. After the usage of her sick, personal, and vacation days, she starts an unpaid leave of absence. Her contract states that at the beginning of each school year, she earns vacation and sick days even though she is on a leave of absence. She chooses to receive pay for those newly earned vacation and sick days to supplement her income while on the leave of absence. Is the vacation pay received while on a leave of absence RCC or NRCC?

**Answer: NRCC. Payments for sick, vacation, personal leave day(s) or holidays made while a member is in a non-contributing status are NRCC because the member is not required to work during the leave and did not earn the additional leave by rendering service.**



## SCENARIO 7

Your teacher's union accepts a pay freeze; however, if the teacher submits the letter of retirement, then his standard salary schedule is not frozen. Is the salary paid above the frozen salary schedule RCC or NRCC?

**Answer: NRCC. The payment is a severance payment because only employees who are retiring are eligible for the payment.**



## SCENARIO 8

Your high school teacher was hurt on the job and is being paid workers' compensation. Is the workers' compensation RCC or NRCC?

**Answer: NRCC, unless the member is reported on a Special Sick Leave. A member on workers' compensation is not engaged in work. Under the Board's Special Sick Leave Policy, however, which is a form of an approved leave of absence, a member may receive up to one year of service credit, provided: (1) the employer agrees; (2) the member is receiving at least half pay either by direct payment, workers' compensation payments or a school district paid disability insurance policy; and (3) employer and employee retirement contributions are made based on the full salary of the member.**



## SCENARIO 9

Your school settles an arbitration with a school employee. The agreement states that the school will pay the employee \$10,000 as back pay for the 2016-2017 school year and in exchange the employee agrees to retire. Is the \$10,000 RCC or NRCC?

**Answer: It depends. The payment is labeled as back pay and is associated with a payment for a particular school year. What is unclear is what portion of service the payment corresponds to and whether the salary is what the member would have received for that portion of time. For example, the member missed 8 months of work but the parties may only agree to pay \$10,000 for 4 months of pay. PSERS will credit the member with 4 months of service but the agreement must specify the actual time period that the \$10,000 is to apply to.**

***Note: The employee's agreement to retire does not make the payment a severance payment.***



## SCENARIO 10

Your school negotiated a new salary schedule. Any employee who is at the maximum step on the schedule will receive \$500 that is not added to base salary. Is the \$500 RCC or NRCC?

**Answer: RCC. The \$500 is a step-cash payment payable to anyone who reaches the highest step on a standard salary schedule. But for the restriction imposed by the salary schedule, the employees would have otherwise received a normal raise that would have been included in base salary.**



# QUESTIONS?

